

Exhibit 12

ARBITRATION
SIMON ANDRIESZ vs BGC FINANCIAL

May 15, 2024
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1 P-R-O-C-E-E-D-I-N-G-S

2 THE CHAIRMAN: Good morning to you all.
3 We are back on the record in the matter of Simon
4 Andriesz versus BGC LP, and et al, And the Case
5 Number is FINRA 2202539. We're here for closing
6 arguments. Counsel for claimant has agreed to
7 let -- or waive starting (inaudible) and allowing
8 the respondent to go first. So Mr. Shah will go
9 until then, at which point we'll discuss whether to
10 take a break or just go directly to Mr. Brickman.

11 With that being said, the floor is yours,
12 Mr. Shah.

13 MR. SHAH: Thank you very much, Mr. Panel
14 Chair. The first thing I'm going to do before I get
15 started, in a handout we've put together slide decks
16 for the benefit of the panel, for opposing counsel.
17 Eventually, Mr. Nadkarni (phonetic) will be on the
18 Zoom, and so you'll be able to look up and just see
19 which slide I'm on, but until then, I'll try to kind
20 of direct us to where we are.

21 So, I'm going to hand these out. Raise
22 the panel.

23 THE CHAIRMAN: These are illustrative
24 exhibits -- these are illustrative exhibits?

25 MR. SHAH: These are demonstratives,



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1 they're not.

2 (Talking simultaneously.)

3 MR. SHAH: They draw from the image. And
4 if I can proceed?

5 THE CHAIRMAN: Yeah, please.

6 MR. SHAH: I want to start by thanking the
7 panel for your time and attention in this case. And
8 I always start that way, but I really mean it this
9 time. I have tried a lot of cases before FINRA,
10 other arbitral tribunals, other courts, I think Mr.
11 Brickman would agree with me that this panel has
12 been uniquely attentive, deeply probing into the
13 issues that have been raised in the arbitration.
14 And I want to thank you in particular on behalf of
15 my individual clients, Paul Pion, William Shields,
16 Mark Webster, and Jean Pierre Aubin. Those are
17 individuals who the claimant has taken aim at for
18 seven years, since his employment at BGC ended.

19 (Brief interruption.)

20 MR. SHAH: Through the marvels of
21 technology, we're looking at Mr. Nadkarni's office
22 in Midtown. Did we ever go off the record or?

23 THE CHAIRMAN: I don't think so.

24 MR. SHAH: So I'll just, I'll proceed.
25 The slides will go up at some point.



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1 go straight to our first slide, which is a brief
2 outline of where we're going to go. There we go.
3 It's your table of contents. So, I'm going to start
4 where the hearings start, the opening arguments,
5 and I want to pick through the specific allegations
6 of the claimant's level in openings. And it's
7 important because you were told that this is a case
8 about credibility. And if the openings themselves,
9 what the promise was from the claimant, what the
10 evidence would show, were full of broken promises,
11 you're permitted to weigh that in determining
12 whether the claimant's case was credible at all.

13 This panel was aware of what an
14 overflowing mess of allegations were part of this
15 case. Arbitrator Keel, you specifically raised that
16 in the prehearing call where you invited the
17 claimant to narrow the claims in advance of hearing.
18 And they declined. So I want to go through the
19 opening argument just to show how many of those
20 sprawling claims didn't stand up, and were false,
21 not disputed, not unproven, but actually false. And
22 it's a lens with which we would invite the panel
23 when the claimant in summation says something is in
24 the record to doubt whether the record actually says
25 that unless you see it with your own eyes.

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1 Second, I want to talk to you about what
2 you learned in this hearing about the claimant
3 himself, Mr. Andriesz. So many of the allegations
4 in this case are based on nothing other than his say
5 so. And there's even a brand new cause of action we
6 learned about in the post-hearing brief. A cause of
7 action for oral contract with Sean McLaughlin. It
8 doesn't appear anywhere in the world before the
9 post-hearing brief was submitted in this case and
10 it's based exclusively on Mr. Andriesz's testimony.
11 So there's no avoiding the fact that making a
12 credibility determination about Mr. Andriesz,
13 whether he was truthful with you, whether he's even
14 capable of being truthful, is an important task for
15 the panel.

16 Third, I want to walk through two periods
17 of time in the record that are extremely important
18 for reasons I think the panel knows, which is the
19 first quarter of 2016 and the last quarter of 2016.
20 And because of this is summation, we have delicately
21 presented over the course of the hearing documents,
22 testimony that showed what happened, who
23 communicated with whom, when an email was sent, what
24 it said, when a meeting was held. Closing is when I
25 get to tell you why, or at least what we submit

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1 explains the why. And the why when it comes to the
2 first and last quarter of 2016 is extremely
3 illuminating because it relates to Mr. Andriesz
4 obstructing the company's access to its own
5 employees, and attempting to manipulate the company
6 in order to get his way with respect to his group,
7 in a way that was not proper.

8 Fourth, under what was proven, we are
9 going to talk first about what was not even
10 intended, which are cases against certain of the
11 respondents who nevertheless continue to be named.
12 Certain of the claims have no evidence supporting
13 them. And then we will go through, in part, taking
14 a hint from Arbitrator Keel's email, we will go
15 through the claims one by one, which was not
16 initially our intent, so the panel understands both
17 what the standard is and what our response is to the
18 factual application of that standard.

19 And, finally, we're going to talk about
20 the equities. Almost all the claims in this case
21 were legal, but an arbitral tribunal is permitted to
22 consider the issue of overall fairness, and we'd
23 encourage you to consider the issue of overall
24 fairness, and so I want to conclude by talking about
25 that.



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1 What the respondents were on notice of was
2 not a disciplinary case, it had a specific
3 explanation or specific claims it was pursuing. It
4 was this kitchen sink. It was a desire to make as
5 many allegations as possible, hoping that the panel
6 will determine that if BGC can't clean them all up,
7 it will fine for the claimant. The panel knows that
8 that is not how it works, but we want you to
9 remember that the shape of this hearing, the
10 evidence that was submitted based on the claimant
11 trying to meet a burden, and the respondent
12 addressing the specific claims that the claimant
13 made.

14 That brings me to the claimant himself.
15 His credibility is extremely important, and I just
16 want to -- or if we're able, plead for you Mr.
17 Andriesz in his own words. This is a tool called
18 Joint Exhibit 439, which Mr. Andriesz authenticated
19 in his cross-examination, and stated specifically
20 that he was recording in order to capture a
21 conversation with former desk head in New York,
22 Michael Griffiths.

23 (Playing a recording.)

24 Got any enemies in the market? People may
25 not, may think I'm annoying or whatever, and I

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1 probably think the same about them, right? We all
2 choose our friends, but I don't have the grudges
3 against someone in the market that I would -- it
4 would be all consuming that I would go around
5 defaming them deliberately to try and destroy their
6 life. There's no one, there's no one in the market
7 I would do that to. Well, probably Mr. Aubin, apart
8 from him. Right, you know, but he's -- he's --
9 he'll -- that guy'll get his dues when, when, When
10 someone more powerful than us decides to pass
11 judgment on him. There's no excuse for it, right?
12 (Inaudible).

13 (Recording stopped.)

14 THE CHAIRMAN: I think if the panel has
15 questions, it needs to ask itself about that
16 particular passage, but one of them maybe is Mr.
17 Andriesz speaking figuratively? Blowing off steam?
18 Making a joke? When I, when I heard this, I thought
19 who talks like this? I think I could rack my brain
20 for the 42 years I've been alive for a moment where
21 I've said out loud that I'm going to destroy another
22 human being and come up empty. And I think if the
23 panel did the same thing, they would come up empty
24 as well.

25 Mr. Andriesz said this out loud on a



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1 recording that he was making as evidence. It's a
2 key to understanding how Mr. Andriesz operates. He
3 does, in fact, pursue vendettas to destroy people.
4 And he recognizes that a way to do that is with
5 untruths, with lies. People don't talk like this.
6 They don't mean it. And this is not the only
7 instance of Mr. Andriesz is talking like this.

8 This is a text thread, KX441. Between
9 Mr. Andriesz and Mr. Velez. This is while [REDACTED]
[REDACTED], and very much
11 in the camp of helping Mr. Andriesz destroy BGC.
12 If you look at the top right, that's Mr. Andriesz
13 saying, I'm going to destroy them. That's right.
14 This is in preparation for this arbitration. That's
15 what they're doing. You can look at the whole text
16 thread, they're preparing for arbitration, and his
17 plan, consistent with his recording, is that he's
18 going to destroy them. And lest you think he was
19 being figurative in the previous exhibit, where he
20 said he would destroy them with defamatory lies, the
21 text thread is full of them. Calling BGC Russian
22 money launderers, American traitors, 911 fraudsters.
23 Skip and Snelling, two lawyers at BGC, are crooks.
24 Those are people, by the way, that he reported to
25 the British Bar in an attempt to disbar them.

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1 Mr. Andriesz was aware that those revenues from the
2 Chicago execution desk, not only were not written
3 into his contract, but were not, as a matter of
4 practice, included in his bonus. If you go to 85,
5 you'll see why that might be. This is -- 85 is a
6 picture from JX265, which is our best document to
7 explain to you how these calculations work. If you
8 want to see what's going on quarter to quarter, this
9 is a document that you might want to spend a minute
10 with. But in the last sheet, BGC describes what the
11 Chicago revenue was and makes clear in real time,
12 not for the purposes of this panel, but in its own
13 accounting, most of that revenue has nothing to do
14 with Simon Andriesz. Period. Most of the volumes
15 are traded from Switzerland. Other desks, about 20
16 percent of the volumes, relate to Mr. Andriesz. Why
17 would he get the whole amount of that revenue, as he
18 claims in this case? It makes no sense.

19 Go to slide 86. Mr. Andriesz admits over,
20 and over, and over again before he decides he wants
21 to sue BGC for breach of contract, he admits again
22 and again, this is the system that was set up when I
23 arrived at BGC. I don't get this revenue in my
24 bonus pool. He's being honest, because in January
25 the only thing he's asking for is for a non-bonus

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1 pool discretionary payment to be paid to the people
2 he promised it to. So he has no reason not to tell
3 the truth, and in these email communications, he's
4 saying this is not part of my bonus pool, but when
5 you're considering my discretionary bonus, can you
6 please consider it? No deception here. There's
7 full knowledge between all parties. The Chicago
8 revenue is not part of the bonus pool.

9 I'm going on to the more detailed numbers.
10 If you go to slide 87. In the post-hearing brief,
11 the claimant said that Mr. Andriesz, under Section
12 3A, his salary draw was underpaid \$133,333.33. The
13 panel said, can you provide us a calculation? And
14 you maybe saved BGC \$50,000 there when you asked for
15 that. Because now the calculation is \$83,333.
16 That's the second one. But it turns out we don't
17 need the help, because actually BGC paid the full
18 amount. We did the math for you in our brief, but
19 if you take 11 months of the year, which is the
20 amount of months under the contract, we've actually
21 overpaid Mr. Andriesz by six cents. We don't want
22 the six cents back. We're good.

23 He's wrong on the numbers in other ways,
24 and slide 88 is important to me because this is
25 really the only time we can address this claim.

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1 It's not raised at the hearing at all. Now claims
2 that Mr. McLaughlin promised him \$1.823 million.
3 News to me. Certainly not a claim in the Statement
4 of Claims, certainly not a claim anywhere else.
5
6 First time post-hearing brief. And the 1.823
7 million -- first of all, there's no evidence of that
8 agreement, there's just none. You have Mr. Andriesz
9 who will lie about anything to get money. That's
10 the only evidence. The only other evidence other
11 than testimony in the record is an email sent by
12 Mr. Andriesz that Mr. McLaughlin doesn't respond to.
13 They sued Mr. McLaughlin. They dismissed that claim
14 against him, and they didn't make any effort to
15 actually call him to the hearing room.

16 Just ask yourself whether you think Sean
17 McLaughlin would have agreed to this
18 characterization. I think to ask it is to answer
19 it. And you don't need to assume that, there is an
20 HR memo from February 22nd, 2016, that includes the
21 results of investigation that included an interview
22 with Mr. McLaughlin. It says, the company has no
23 obligation to allocate any rebates to the desk. If
24 you were to take this seriously, this claim is -- it
25 is fatally disposed of just by the fact the

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1 employment agreement says it can't be orally
2 modified. But just to gild the lily for a moment,
3 that \$1.823 million dollar number, that is all the
4 execution that is taking place on the Chicago
5 execution desk at a certain point in time.

6 Meaning, the Switzerland desk that is most
7 of the money, Hong Kong, Dubai, the money that the
8 Chicago execution desk is doing directly, but the
9 way this is written, Mr. Andriesz is saying, I am
10 entitled to \$1.823 million dollars. He's not. Even
11 if it had to do with his desk, which is a slim
12 percentage of this. They made no attempt to tell
13 you how much is in his desk. That's a desk that has
14 like 15 to 20 people. You've seen the book. Mr.
15 Andriesz doesn't get a hundred percent. He doesn't
16 get close to that. It's just a money grab. It's a
17 money grab on a claim that he didn't provide notice
18 of.

19 There is a claim that the fourth quarter
20 2016 bonuses owed, this is one that the contract
21 just fully disposes of, period. It says explicitly,
22 you have to be present as an employee, it's a
23 condition, when the bonuses are paid in order to be
24 paid the bonuses. Mr. Andriesz -- you know, you
25 heard in Mr. Brickman's opening, they fired him the

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1 day before they were paying. They didn't. You saw
2 that Q4 bonuses were paid in March 27th. But he
3 wasn't even close. He didn't work any of December.
4 He received, on the other hand, in December, he
5 received his bonus for that year. And, in fact,
6 while he was suspended, the record shows BGC emailed
7 him the full bonus pool and said, What would you
8 recommend? That's BGC going above and beyond, and
9 making sure they're complying with the terms of the
10 agreement. He's not owed any additional money. But
11 this \$250,000 number, it is picked from the ether.
12 If you look at that number, the citation is to
13 Exhibit 448. Exhibit 448 is a statement of claims.
14 It's not evidence. Just what they pled at the
15 beginning of the hearing, they didn't provide any --
16 this is an admission, there's no evidence supporting
17 what they were saying.

18 I'd also encourage you when you're looking
19 at this post-hearing brief, just to look at how many
20 of their claims are supported only by Simon
21 Andriesz's testimony and the statement of claim.
22 You can cross those out. You don't even have to
23 consider it. Just as another example for why we
24 just think, if they wanted to tell you there was a
25 miscalculation, they had the burden to show it to

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1 you at the hearing and not after. So much of what
2 they presented in post-hearing briefing is just not
3 true. Including the statement that the London desk
4 is never in deficit in 2015. It was. In Q3, it was
5 in a deficit. This is an email from Tommy Attrell,
6 who we were told is the great oracle of desk pool
7 accounting. To calculate these things involves
8 work. BGC did the work. Did it in real time. And
9 it provided that work to Mr. Andriesz in real time.
10 And most quarters, when he wasn't having a tantrum,
11 he ratified it. He agreed to it. He's not
12 permitted now, after the fact, to try to change that
13 reality, to pretend that some kind of fraud took
14 place.

15 The labor law claim largely tracks the
16 contract. If he was due money, and this doesn't
17 relate to lost profits, if he was due money that was
18 an earned wage, the labor law applies, but he's not.
19 It doesn't. I'll give you a couple of case sites,
20 but that is clear as bell. The Securities Fraud
21 Claim in this case. I don't know what the
22 Securities Fraud Claim is in this case, actually. I
23 don't even know what the theory is, but here are
24 the elements in the Securities Fraud Claim, and you
25 can find out from Mr. Brickman what on earth

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1 canon prevents a finder of fact from ascribing to
2 one word, a meaning so broad, that it is
3 inconsistent with its accompanying words, thus
4 giving unintended breadth to that one word.
5 Insubordination is next to dishonesty.

6 Mr. Shah would now say, well, he was also
7 dishonest. It's next to the word disloyalty.
8 Mr. Shah will now say, Well, that's what we really
9 meant when we said continuing insubordination. We
10 meant dishonesty, disloyalty, unsatisfactory
11 performance. That's all in Section 4A of
12 Exhibit 38. Now, I asked Mr. Aubin to point to any
13 portion of Simon's performance that was
14 unsatisfactory. So there was no unsatisfactory
15 point. Again, everyone returned except Mr. Shah,
16 who needs to do an after the fact justification for
17 what was written. Everyone returns to the word
18 insubordination. If an employer mandates an
19 employee lie under oath when the employee refuses to
20 do so, no one would say that's insubordination.
21 When this employer asked Mr. Andriesz to ratify
22 their manufactured reason, he was well within his
23 rights to disregard it.

24 The word salad excuses that BGC posits,
25 even today, to justify its December 2nd, that's the

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1 suspension letter, and January 31, 2017, that's the
2 termination letter, roots are all unavailable.
3 Simon has proved, by overwhelming evidence, not just
4 the preponderance of the evidence that is his
5 burden, the second prong of his breach of contract
6 claim is termination was clearly wrongful,
7 constituting a breach of contract.

8 The panel should then turn to the question
9 of what damages are reasonable or should be
10 recovered by Simon on this claim. We're talking
11 about the breach of contract claim. On the first
12 prong the failure to include the rebates and crosses
13 in the net revenue calculation for Simon's pool, he
14 should recover at least \$1,823,844.14, or
15 historically, whatever portion of that he allocated
16 to himself, which is 60 percent. And the oral
17 contract with Sean McLaughlin for the same amount.

18 Now, Mr. Shah says, the first we ever
19 heard of that was in the post-hearing brief. Day 2,
20 Simon Andriesz, 4772, line 20 to 480, line 10,
21 specifically talks to Mr. McLaughlin's oral
22 agreement to pay him that sum. Now, I'm sorry,
23 it's also at 380 to 382, the oral agreement. Now,
24 Mr. Shah says, There's no evidence of an oral
25 agreement. Well, there is, Simon's testimony.

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1 Choose to believe it or not believe it, but whether
2 or not you proceed with an oral agreement, and this
3 is a good point to point it out, Mr. Shah says
4 somehow Mr. Andriesz should be punished for not
5 calling these witnesses. That why didn't he call
6 these witnesses to let them defend the case? Well,
7 BGC had ample opportunity but did not call Diane
8 Rosato, Terry Firthly, Baldrick Marinos, William
9 Shields, Paul Pion (phonetic). Anyone from Cantor
10 Fitzgerald, even though all these people had, except
11 Mr. Marinos, had Cantor Fitzgerald email addresses.
12 And Sean McLaughlin, why didn't he call any of those
13 people?

14 Simon gave you an explanation, but we
15 don't even have to go into Simon's explanation. If
16 they thought they had testimony that would defend
17 against this contract claim, why didn't BGC bring
18 them? So we have the \$1,823,844.14, or if you look
19 at Exhibit 265, it's the wrongfully excluded revenue
20 inputs was [REDACTED] On the wrongful termination
21 breach of contract claim, it doesn't involve Mr.
22 Smith or Dr. Smith's analysis. Mr. Andriesz should
23 recover at least what he would have made in the
24 two years remaining on the term of his contract,
25 which would have been \$1,966,512. And, by the way,

1 because he's a consummate professional. Always
2 maintained his consummate professionalism.

3 So, their attempts were to manufacture a
4 reason to terminate Simon's employment, deprive him
5 of his earned compensation, attempt to silence him,
6 or in the alternative permanently besmirch his
7 reputation with the aim to ruin his career. Rarely
8 do you get a respondent telling you, threatening to
9 do to you what he ends up doing. If you don't shut
10 up, you're going to go the way of Riffis.

11 Manufacture an insubordination reason to terminate
12 him.

13 Respondents miscalculated one thing, and
14 it's easy to miscalculate because I've never met
15 someone with Simon's resolve and his persistence.
16 Respondent's day of reckoning is nigh. We implore
17 the panel to make this right, to make Simon whole,
18 at least to the extent that an award of substantial
19 money damages can do that. We've provided you ample
20 tools in terms of legal theories. All you have to
21 really concentrate is on the breach of contract, the
22 New York labor law, and the Dodd-Frank
23 whistleblower. Compelling evidence and supportable
24 damage calculations that don't have to be calculated
25 with precision. We just have to reasonably estimate

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1 the damages that were suffered to accomplish that
2 end. At the absolute minimum, on the breach of
3 contract claims and the New York labor law claims,
4 the panel should award Simon, and I can go into the
5 various components, but we have them, we have the
6 unpaid wages of \$3.4 million, the unallocated
7 revenue input of \$1.8 million, with two years of
8 lost wages of \$1.1 million, \$250,000 of quarter 4
9 2016 bonus. \$89,000 of available but unpaid bonuses
10 for Q3 and Q4 of 2014. Remember, that's Exhibit 46.
11 And \$83,000, that's the unpaid -- the difference
12 between the 400,000 and what he received in 2000 --
13 for 2015. Liquidated damage of 100 percent those
14 amounts. So there's another 3.4 million. Interest
15 at 9 percent, that's 1.6 million. Loss value of his
16 life, that's a minimum of 2.7 million. And
17 attorney's fees subject to further submission for a
18 total, not counting attorney fees, of \$11,210,762.

19 In addition, this panel, despite
20 Mr. Shah's feigned outrage of these witnesses who
21 never appeared in defense of their claims, the panel
22 should order that BGC, not Mr. Andriesz, pay all of
23 the costs, including arbitrator fees associated with
24 this arbitration. If you are convinced that Simon
25 has also proved his Dodd-Frank whistleblower case,

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1 which we believe that you must, the panel should
2 also award Simon an additional amount of between 27
3 million and 43 million based on Dr. Smith's
4 analysis which is Exhibit 459, representing his lost
5 wages to age 65 retirement, plus punitive damages in
6 a sufficient amount to deter respondents who are
7 professionals, not at brokering, but litigating
8 these arbitration claims.

9 Mr. Shah has done, as he said, many of
10 them, and he was impressed with this panel as
11 extraordinary, as was I. But the many he has done
12 in this are BGC. You also have all that evidence of
13 BGC sanctions by FINRA, by CFTC, by the SEC.

14 And Mr. Shah, in fact, interrupted me at
15 one point and said, All the brokers have those kinds
16 of sanctions. All of those brokers get dinged by
17 FINRA. I know you've all told your kids if you have
18 them, just because everyone else does it, doesn't
19 make it right. They are a criminal enterprise that
20 have become expert at demonizing anyone who stands
21 up to them. So, punitive damages, particularly as
22 to BGC, so that they don't engage in this similar
23 abhorrent behavior in the future, punitive damage
24 award is sustainable, and the cases say it, of
25 anywhere from 10 to 15 times any compensatory damage

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1 award.

2 Again, thank you very much for your time,
3 attention, and hard work. It has truly been a
4 privilege to appear before you. I would be happy to
5 answer any further questions the panel might have on
6 anything we've discussed today with the
7 understanding, the theme to remember here, is words
8 matter, not after the fact lawyers.

9 THE CHAIRMAN: Thank you, gentlemen. I'd
10 like to I'd like to briefly discuss and talk to my
11 fellow panelists on the solid issue of process.
12 Before we go off the record, I just have a question.
13 As I understand your agreement, if we choose not to
14 ask any questions, I'm not suggesting we're going to
15 do that, but if we choose, neither of you have
16 anything else to say.

17 MR. BRICKMAN: We are done.

18 MR. SHAH: Look, my belief is, I now
19 understand why they went second. We have a lot that
20 we would share in the form of, you know --

21 MR. BRICKMAN: But that's not our
22 agreement.

23 MR. SHAH: We had no agreement.

24 THE CHAIRMAN: And we may have questions.
25 I just wanted to confirm that if that's what we

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1 so --

2 MR. BRICKMAN: Right, so that --

3 ARBITRATOR KEEL: If he was a million
4 eight, whether it be a hundred percent or 50
5 percent, it's reduced to 60 percent.

6 MR. BRICKMAN: No, it's -- it's even
7 reduced more than that. It would be 50 percent of
8 the one, eight or 2 million, depending on what
9 number you use. And then Simon would get 60 percent
10 of that 50 percent.

11 ARBITRATOR ALCON: Well, actually, that's
12 probably not entirely accurate. The 50 percent is
13 the starting point for a number, but if I understand
14 correctly, that revenue.

15 MR. BRICKMAN: Yes.

16 THE CHAIRMAN: Then there's some haircuts.
17 There's salary haircuts. You know, there's -- you
18 know, some attribution of expenses attributable to
19 the two desks, and then there's a net number.

20 MR. BRICKMAN: Right, but.

21 ARBITRATOR ALCON: But that number --

22 MR. BRICKMAN: That's a really great
23 question. With respect to the bonus pools for 2015,
24 those deducts have already been made. This is just
25 additional revenue against which there are no



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1 further deducts because the deducts have already
2 been made in terms of desk compensation.

3 ARBITRATOR ALCON: Well, okay, that's you
4 know -- that's -- that's perfect. Yeah, that makes
5 sense.

6 THE CHAIRMAN: Mr. Shah, I think you want
7 to move on to the next subject.

8 MR. SHAH: What should have happened here
9 is an actual bonus pool calculation if they claimed
10 ours wasn't good. The one -- they should have
11 presented an actual calculation, because you're
12 exactly right, Arbitrator Keel. And there's a few
13 different points in this --

14 MR. BRICKMAN: He thinks you're Mr. Keel.

15 ARBITRATOR KEEL: I'm Keel.

16 MR. SHAH: Well, he's also right, but you
17 were specifically --

18 ARBITRATOR ALCON: You can call me Keel,
19 it's okay.

20 THE CHAIRMAN: We work together, so
21 it's -- I wouldn't take offense.

22 MR. SHAH: So, point one, 60 percent is
23 pulled out of the ether. It is not a real number.
24 265 has the bonuses that are paid to the New York
25 and the London desks each quarter. Quarter 1,



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1 [REDACTED] How much does Simon get? 90,000. Not
2 great at math, but [REDACTED]
3 Quarter 2, [REDACTED] How much does Simon get?
4 73,000. [REDACTED] Quarter 4,
5 [REDACTED] How much does Simon get? This much, zero.
6 Quarter 4, [REDACTED] How much does Simon get?
7 35,000. [REDACTED] [REDACTED]

8 Which is to say --

9 MR. BRICKMAN: How much did he get in Q3?

10 MR. SHAH: -- 60 percent is just a grab.
11 And what you should have been presented if this was
12 a measure of damages was exactly the calculation you
13 described, because there's periods with deficits.
14 Periods where others need to get paid. But you're
15 right, you're supposed to take 50 percent, reduce it
16 by the related expenses, and then multiply it maybe
17 by an average allocation. But of course, the
18 allocation, BGC has the right to make determinations
19 about it.

20 ARBITRATOR ALCON: Right.

21 MR. SHAH: And it has a right to refuse
22 the allocations, as Mr. Andriesz suggests.

23 MR. BRICKMAN: I would ask the panel to
24 look at the allocation out of the Q3 2016 bonus,
25 where Mr. Andriesz got 150,000, and it's

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1 particularly mentioned that, not surprisingly, I
2 think they say in their post-hearing brief,
3 Mr. Andriesz took 150,000 of this.

4 THE CHAIRMAN: Okay. Thank you very much
5 for this. We got it.

6 Mr. Brickman, this is under the words
7 matter category, going back to contract, Exhibit 38.
8 You've talked about the portion of the contract that
9 says you get 50 percent of the net revenue. You did
10 not talk about the second part of that sentence,
11 which says that they're entitled to 50 percent of
12 net revenues of the desk of --

13 MR. BRICKMAN: The missing word is less.

14 THE CHAIRMAN: Basis -- no. On the basis
15 in accordance with BGC's then current accounting
16 policies and practices, and that's the subject that
17 we talked about in the supplemental question. It
18 seemed to -- at least it's arguable, is it not, that
19 those words are part of the sentence and that you
20 cannot say that net revenues includes everything
21 attributable to the desk if that, in fact, was not
22 the way it was being accounted for in those desks
23 historically.

24 MR. BRICKMAN: Let me divide your question
25 into two parts, because I think it needs to. There

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1 the sort of about face we saw there was, I think, a
2 little funny, which is, of course, they didn't pay
3 it in 2015. That's what the money they're asking
4 for. They acknowledge, we all acknowledge none of
5 this was paid in 2015. And so my point to the panel
6 is --

7 ARBITRATOR KEEL: The first portion of the
8 year. So, you know, there was no -- assuming it
9 wasn't paid for the first portion of it, and
10 Mr. Andriesz signed off on those. You cited that as
11 evidence, that that is his understanding, that it
12 wasn't called for. So that's what I'm probing at.

13 MR. SHAH: It's very strong evidence
14 because you've seen the degree to which this is all
15 made available to Mr. Andriesz and Mr. Attrell, but
16 I think the most telling evidence comes from January
17 of 2016 when he says, I want this discretionary
18 bonus. BGC says, It doesn't look like there's some
19 money right now, at this moment. Mr. Andriesz says
20 in five consecutive emails, This is not money that
21 we ever receive. This is not money that's
22 attributed to the pool. And he says specifically,
23 this is 100 percent good for BGC. This is what the
24 plan that was put in place when I joined. It
25 couldn't have been clearer that his understanding

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1 was this money, not Ronan money executed in the UK,
2 but Chicago floor revenue belongs to the Chicago
3 execution desk. That is a specific exclusion in
4 section 3B. And, also, if we're not gonna put weight
5 on the exclusion, then certainly BGC's practices is
6 overwhelmingly clear based on it.

7 MR. BRICKMAN: And I would just ask the
8 panel to refer to section 10B of the Exhibit 38.
9 Which talks about 10 is it -- it's 10A and 11A which
10 talks about what Simon might have agreed to does not
11 constitute a modification of what the contract
12 provides, and in order for it to be a modification
13 of what the contract provides or a waiver of any
14 provision that's 11A, it has to be in writing,
15 signed by both parties and --

16 ARBITRATOR KEEL: Which is a very good
17 segue to my last question before we get kicked out.
18 You have a claim for an oral agreement modifying
19 this, how can you -- assume it's in place, how can
20 you sue an enforcement in the face of that kind of
21 language?

22 MR. BRICKMAN: It doesn't modify, because
23 it doesn't modify the contract. The oral agreement,
24 and, again, I cited testimony, it's --

25 ARBITRATOR KEEL: Mr. Andriesz testified



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1 there's no contemporaneous writing, though.

2 MR. BRICKMAN: Right, but what he
3 testified to, he went and spoke to McLaughlin and
4 Aubin when I discovered the accounting fraud, and
5 they agreed to pay it. That is -- that has nothing
6 to do with the contract. That's not a modification
7 of the contract. They agreed that there was a sum
8 of money that Simon Andriesz said was not proper --
9 was excluded.

10 ARBITRATOR KEEL: But that's the first
11 50 percent. You're claiming an oral agreement to
12 pay not 50 percent, but 100 percent on this group of
13 revenues. And that strikes me as a modification.
14 No?

15 MR. BRICKMAN: No, because he complained
16 that it wasn't included, and if you buy the argument
17 that it was properly excluded, then they say --
18 Simon coming to them and saying, I have this
19 problem, I think it was improperly excluded. And
20 they said, don't worry, we'll pay it. Just like
21 they paid discretionary bonuses. They were
22 absolutely free to pay additional amounts above and
23 beyond what was called for in the contract. And
24 yet, Sean McLaughlin, who is the president --

25 ARBITRATOR KEEL: But accepting that they

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1 could give money away, it doesn't follow what
2 they're contractually obligated to do so. And
3 because it's arguably an oral modification of
4 agreement that says we don't have to pay more than
5 X.

6 MR. BRICKMAN: Arguably yes, or is it --
7 or is it a set up.

8 ARBITRATOR ALCON: -- an adjustment to a
9 practice, accounting practice. Well, this is --
10 that's why we asked about whether the policies and
11 practices were reduced to some sort of a writing
12 somewhere. And, again, it feels like, I'm not
13 saying they are, but it feels like from what we --
14 what limited window we have on this, that these
15 practices could have been modified or adjusted for
16 any broker who had a similar contract or tweaked
17 without having to actually modify in writing the
18 contract. I have issues with oral agreements that
19 are not at least contemporaneously reflected in some
20 writing as to what the agreement was. You know, so
21 even put that aside for a moment, you're not saying
22 for that -- your oral agreement, you know, with the
23 CEO that 1.8 million is due to be paid Simon?

24 MR. BRICKMAN: Yes, I am.

25 ARBITRATOR ALCON: Why is that?



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1 MR. BRICKMAN: Because that's what they
2 agreed to. And even if you don't consider it an
3 oral modification -- even if you consider it a
4 modification of the agreement, which I don't think
5 it is, I think it's a separate agreement --

6 ARBITRATOR KEEL: Can I -- maybe I
7 misunderstood. I thought under the contract he
8 allocated what portion of whatever was in the pool.

9 MR. BRICKMAN: That's right, but this
10 wasn't in the pool.

11 ARBITRATOR ALCON: We understand that,
12 but --

13 MR. BRICKMAN: But the other thing I would
14 ask the panel to consider.

15 ARBITRATOR KEEL: He should get all.

16 MR. BRICKMAN: Huh?

17 ARBITRATOR KEEL: All 100 percent of it
18 rather than 25 percent.

19 MR. BRICKMAN: That's what his
20 conversation with McLaughlin, Aubin, and Windyat
21 (phonetic) indicated. And that's testimony. And the
22 Windyat conversation is supported by an exhibit.
23 But, also, don't forget about Section 3E of the
24 contract. And section 3E of the contract provides
25 for the payment of discretionary bonuses. So if you

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1 say this isn't -- we're not going to consider this
2 an oral modification of the contract. There is
3 uncontroverted testimony that they agreed to pay it.
4 No one -- Mr. McLaughlin didn't come in and say, no,
5 no, I never agreed to that. Mr. Aubin never came in
6 and said, no, no, I didn't agree to that. Mr.
7 Windyat didn't come in and say, no, no, I didn't
8 agree to that. So why, if you don't want it to be,
9 if you don't trust oral modifications, why isn't it
10 a Section 3E agreement to pay him a discretionary
11 bonus? And a certain amount of which they were
12 completely entitled to do.

13 THE CHAIRMAN: Oh, Mr. Shah.

14 MR. SHAH: I would like the panel to take
15 Mr. Brickman's answer to your question and take
16 whatever credibility you feel that answer has and
17 apply it to all the damages calculations he's trying
18 to do for you. Because that is absurd. There's
19 no --

20 THE CHAIRMAN: We got to -- before we
21 close the record, because of the extra week you guys
22 weaseled out of us with the hearing, this today as
23 opposed to last week, we have a scheduling issue.
24 Mr. Alcon goes on vacation tomorrow. And so we're
25 going to reserve the right to issue our opinion



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1 between 30 and 45 days, rather than within 30 days.
2 We hope you'll give it to us, but we're going to
3 insist on it.

4 MR. BRICKMAN: We willingly give it to you
5 with one consideration. We'd appreciate whenever
6 the panel gets around to it, and I don't even care
7 if it's 60 days, but whatever the panel gets, we'd
8 appreciate if like with your supplemental questions.

9 THE CHAIRMAN: Give you direct --

10 MR. BRICKMAN: You fax it to us.
11 Otherwise it could get lost.

12 THE CHAIRMAN: If let us do it, they may
13 not.

14 MR. SHAH: I don't think they will.

15 MR. BRICKMAN: Oh, they do.

16 THE CHAIRMAN: Well, yeah, the answer is
17 I will ask. If FINRA permits it, then I will do it.
18 But I don't want to get in trouble with FINRA.

19 But the last comment I want to make to you
20 is that FINRA is the same one we began with whenever
21 we began. Under FINRA's rules, they encourage
22 mediation. You guys are free to settle at any time
23 before our decision, and FINRA encourages it. So I
24 want to say that we really enjoyed the
25 professionalism of the company, and the name



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